IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1367 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJU @ RAJESH BACHUBHAI SOLANKI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MR BS SUPEHIA for Appellant(s) : 1,
MR AY KOGJE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 19/03/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellant came to be tried by Sessions Court, Kheda, Camp at Anand for the offence of murder of Savitaben, widow of Motibhai, allegedly committed by setting the deceased to fire at 0030 hours on 12th August, 1998 at village Bechari of Umreth Taluka of Kheda district. The appellant came to be convicted for the said offence and sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000, in default, to undergo S.I. for one year by judgment and order dated 29th November, 1999 passed in Sessions Case No.306 of 1998. Hence, this appeal by the convict.

2. The prosecution case can be stated in brief thus:

Deceased Savitaben and accused Raju @ Rajesh Bachubhai Solanki developed illicit relations after death of Motibhai, husband of Savitaben. This relationship was opposed to by parents of Savitaben as well as her children and her sister. However, she was determined to go her way and paid no heed to the words of advice or the opposition of the relatives and even her sister.

2.1 On the day of the incident, Savitaben's children namely, Vidya, Premila and Kalu went to bed on the upper storey of the house whereas Savita remained at the ground floor. In the midnight, they heard shouts of Savita for rescue. They, therefore, rushed downstairs. They met accused Raju and he told

them not to raise shouts and then he escaped towards the back of the house where his house is located. The three children went into the house to find that Savitaben was burning. They threw quilt on her to set out the fire. They enquired of the deceased and were told that Raju had set her to fire. In the meantime. Amritben - sister of the deceased, arrived. She also enquired and she was told the same thing by the deceased. The deceased also told Amritben that the accused insisted for physical relationship on that day and was annoyed on her refusal and set her to fire. The deceased was then taken to the hospital but before reaching the hospital, the deceased succumbed to the injuries. The F.I.R. was lodged by Vidyaben - daugther of the deceased on the basis of which offence was registered and investigated. On arrest, the accused was found to have suffered burns injuries on his hands. The chargesheet was filed in the court of J.M.F.C., Umreth. As the case was triable exclusively by Court of Sessions, it was committed to Court of Sessions and Sessions Case No.306 of 1998 came to be registered.

2.2 Charge was framed against the accused for the offence of murder at Exh.2. The accused pleaded not guilty to the charge and claimed to be tried.

2.3 The Trial Court, after considering the evidence led by the prosecution, concluded that the prosecution was successful in establishing the charge and, therefore, convicted the accused and sentenced

him to imprisonment, as stated above.

3. We have heard learned advocate Mr. B.S. Supehia for the appellant and learned APP Mr. Kogje for the respondent. We have gone through the record and proceedings.

4. Learned advocate Mr. Supehia submitted that he cannot dispute that the deceased died of burns injuries but he emphasises that the prosecution evidence does not establish the guilt of the accused to the hilt. It does not rule out the possibility of the accused being innocent and the deceased having committed suicide.

4.1 Mr. Supehia submitted that it has come in evidence that the deceased was put under pressure by close relatives like parents, sister and even children to discontinue relations with the accused and because of the pressure, she may have committed suicide. This possibility cannot be ruled out and, therefore, the Trial Court committed an error in convicting the accused for the offence of murder.

4.2 Mr. Supehia submitted further that the evidence shows that the accused – appellant had sustained burns injuries on his hands and, therefore, his presence at the place of incident cannot be ruled out but his conduct in escaping the place of incident cannot be viewed as a factor adverse to the accused for the reason that the accused may have escaped from

the place of incident out of fear of being visited with disrepute. He, therefore, submitted that the appeal may be allowed and the conviction may be set aside.

5. Learned APP Mr. Kogje submitted that the evidence of the children i.e. two daughters examined before the Trial Court and the evidence of the sister of the deceased clearly establishes that the accused – appellant and the deceased had cultivated illicit relations which was opposed to by the relatives but the deceased had shown a strong will to continue the relationship with the accused and, therefore, possibility of the deceased having committed suicide gets negatived.

5.1 Mr. Kogje submitted that the conduct of the accused speaks volumes about his guilty conscience. After the incident, he insists upon the children not to raise any shouts. He also does not come out with any explanation or defence about the deceased having committed suicide. The accused has not tried to explain burns injuries on his hands. There is strong evidence in the form of oral dying declaration supported by above circumstances which would show that the prosecution has successfully established the case against the accused. Mr. Kogje also submitted that the accused has also not even tried to explain his presence in the house of the deceased at wee hours of night. Mr. Kogje, therefore, submitted that the appeal may be dismissed.

6. If the medical evidence is examined, Dr. Dhimant Manharlal Thakar (Exh.9) and the post-mortem notes (Exh.10) prepared by him clearly indicates that the deceased died of Hypovolumic shock due to extensive burns. The viscera were collected and sent to F.S.L. but nothing adverse was found and, therefore, the cause of death is Hypovolumic shock due to extensive burns. It transpires that the deceased had sustained 80-90% burns. The burns injuries were found to be ante-mortem. Semi-digested food was found from the stomach, carbon particles were found from the trachea. The injuries were sufficient in ordinary course of nature to cause death. From the medical evidence, there cannot be any doubt that the death of the deceased was homicidal and we, therefore, confirm the finding of the Trial Court that the death was homicidal.

7. If the evidence of p.w.2 – Vidyaben Motibhai (Exh.14) and Premilaben Motibhai (Exh.25) - another daughter of the deceased and evidence of Amritben Lalitbhai (Exh.24) – sister of the deceased are seen, it is found that all three of them reached the place of incident immediately. Vidyaben and Premilaben have seen the accused fleeing from the place of incident and he, while leaving, asked them not to raise any shouts.

7.1 It is also found that before these witnesses, the deceased has given oral dying

declaration implicating the appellant. The cause shown in the oral dying declaration is not maintaining relations but insistence on the part of the accused to have physical relations by the accused and refusal on part of the deceased which has resulted into the accused setting the deceased ablaze. Despite close scrutiny of these three pieces of evidence, we are unable to find out nor is Mr. Supehia able to point out any material for namesake which may raise even a doubt about the truthfulness of these witnesses or even a doubt about the version of these witnesses on oral dying declaration. Simply because they are relatives, we are afraid, we cannot discard their evidence when there is a ring of truth in their depositions.

7.2 The ring of truth we find because the version gets supported by certain circumstances and conduct of the accused. The circumstances are that the accused himself has sustained burns injuries on both his hands. The accused has not even tried to explain his presence at the place of incident. Barring bare denial during the recording of statements under Section 313 of CrPC, no explanation comes from the accused about the burns on his hands which stands established through the deposition of Dr. Dhimant Thakar (Exh.9) and medical certificate (Exh.13).

7.3 The accused flees from the place of incident. Had it been a case of suicide, there was

no reason for him to escape. The explanation tendered by learned advocate Mr. Supehia that he may have fled away to avoid embarrassment or shame that may visit him does not appeal to us much because it is clear from evidence of Amritben that the accused and the deceased had been nurturing the illicit relations for a long time and despite opposition, they were used to continue the same. It was more or less an open secret and, therefore, the explanation of the learned advocate does not appeal to us.

7.4 Nowhere the accused has taken a plea that it is a case of suicide. This aspect coupled with the fact that he fled away from the place of incident, that he has sustained injuries on his hands and that those injuries are not explained by him strengthen the prosecution case against him.

7.5 We are, therefore, of the view that the prosecution was successful in establishing the case against the accused.

8. We have examined the judgment and order impugned in the appeal and are in broad agreement with the reasonings adopted by the Trial Court as well as the conclusion arrived at by the Trial court convicting the appellant for the offence of murder.

8.1 We do not find any merit in the appeal. The appeal must fail and stands dismissed. The judgment and order dated 29th November, 1999 rendered by

learned Additional Sessions Judge, Kheda, Camp at Anand in Sessions Case No.306 of 1998 is confirmed.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

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